

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>DAVID MULLINS, JR.,</b>	)	
<b>Petitioner,</b>	)	<b>Civil Action No. 7:11-cv-00332</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>BUCHANAN COUNTY CIRCUIT COURT,</b>	)	<b>By: Norman K. Moon</b>
<b>Respondent.</b>	)	<b>United States District Judge</b>

Petitioner David Mullins, Jr., a Virginia inmate proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions in the Buchanan County Circuit Court. The court finds that Mullins has failed to exhaust his state court remedies before filing this federal habeas petition and, therefore, dismisses his petition without prejudice.

**I.**

After pleading guilty in the Buchanan County Circuit Court, the court convicted Mullins of several drug-related charges. Mullins concedes, and state court online records confirm, that he has not pursued a direct appeal or a state habeas petition in any state court.

**II.**

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code § 8.01-654. In this case, it is clear from the face of his petition that Mullins has yet to pursue his claims

in the Supreme Court of Virginia. Accordingly, the court finds that Mullins' petition is unexhausted.

### **III.**

Based on the foregoing, the court dismisses Mullins' instant habeas petition, without prejudice, as unexhausted.

The Clerk is directed to send a certified copy of this Memorandum Opinion and accompanying Order to the petitioner.

**ENTER:** This 14<sup>th</sup> day of July, 2011.

  
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NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE